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Before the
Federal Communications Commission
Washington, DC 20554

OCT 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(b))
Table of Allotments)
Digital Television Broadcast Stations)
Kingston, New York)
)
WRNN-TV Associates Limited Partnership)
)
For a Construction Permit)
For Digital Television Broadcast Station)
WRNN-TV, Kingston, New York)

MM Docket No. 00-121
RM-9674

File No. BPCDT-20020130AAQ

OPPOSITION

WRNN-TV Associates Limited Partnership ("WRNN"), licensee of WRNN-TV, Kingston, New York, by its attorneys, opposes the Petition for Reconsideration ("Petition") filed by WKOB Communications, Inc. ("WKOB"), licensee of WKOB-LP, New York, New York, of the Memorandum Opinion and Order in the proceedings captioned above ("*Channel 48 MO&O*"). As WKOB readily acknowledges, the Petition merely reasserts the same arguments repeatedly rejected by the Commission. Accordingly, the Petition should be dismissed as repetitious or, if considered at all, denied.

The *Channel 48 MO&O* constituted the fourth time that the Commission, and the Media Bureau on delegated authority, held that allotting DTV Channel 48 to WRNN, and authorizing the construction and operation of a station on that channel, complied with all technical requirements, furthered the Commission's goals with respect to the establishment of digital television, and served the public interest.¹ The Commission also affirmed that WKOB, as a

¹ *Channel 48 MO&O* at ¶ 6, *Amendment of Section 73.622(b), Digital Television Broadcast Stations (Kingston, New York)*, 17 FCC Rcd 1485 (Med Bur. 2002) (allocating DTV Channel 48 to WRNN), *recon denied*, DA 02-1776 (rel July 29, 2002) ("*Channel 48 Reconsideration Order*"), FCC File No. BPCDT-20020130AAQ

secondary service, is simply not entitled to legal protection from WRNN's full power DTV operations.² Yet, based on the same arguments rejected by the Bureau and the Commission four times before, WKOB's Petition again urges the FCC to "re-evaluate" its prior "holdings."³ The Commission should swiftly dismiss the Petition as a repetitious and unnecessary burden on its resources.

WKOB refreshingly admits that "the issues have been thoroughly argued in this proceeding" and, as a result, "the Commission may decide summarily to deny reconsideration."⁴ Indeed, dismissal is precisely the outcome mandated by the Commission's rules and precedent. A petition for reconsideration of an order denying an application for review -- as is the case here⁵ -- "will be entertained *only if*" the petition relies on facts that either: (1) occurred or changed after the last opportunity to present them to the Commission, *or* (2) were unknown to the petitioner until after the last opportunity to present them to the Commission and which the petitioner could not, through "ordinary diligence," have discovered.⁶ Moreover, the Commission has clearly held that a petition for reconsideration will not be granted merely to relitigate previously resolved

(Continued . . .)

(granting DTV Channel 48 construction permit) ("*Channel 48 Application Order*") The *Channel 48 MO&O* denied WKOB's application for review of the *Channel 48 Reconsideration Order* and its petition for reconsideration of the *Channel 48 Application Order*.

² *Id*

³ WKOB Petition at 5

⁴ *Id* at 1.

⁵ WKOB opposed WRNN's DTV Channel 48 allotment and construction permit on identical grounds. See *Channel 48 MO&O* at n 1.

⁶ 47 C.F.R. § 1.106(b)(2) (emphasis added), see *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Rosendale, New York)* (Med. Bur. 1998) (dismissing petition for reconsideration of order denying application for review of allotment decision for merely repeating prior arguments and failing to assert changed facts or circumstances)

matters.⁷ Since WKOB fails to present any changed fact or circumstance justifying review of the *Channel 48 MO&O* as mandated by Commission rule, the Petition must be summarily dismissed.⁸

Even if, despite rules and precedent to the contrary, the Petition is considered on the merits, it should be denied. WKOB is a secondary service and, as a result, is simply not entitled to protection from interference by full-power DTV operations.⁹ WKOB's construction permit says as much on its face. The Commission also has repeatedly affirmed the secondary status of non-Class A low power stations, such as WKOB, with respect to DTV services.¹⁰ Contrary to WKOB's allegation, therefore, it had clear notice that its construction permit for Channel 48 was subject to the potential for displacement by WRNN's DTV operations. Thus, as the Commission observed, there was no "change or misapplication of Commission policy" with respect to WKOB's secondary status.¹¹

For the same reasons, the Commission did not act arbitrarily and capriciously by "taking WKOB's money and then disregarding the fate of WKOB-LP."¹² As the Commission held, acquisition of a low power permit at auction did not entitle WKOB to additional protection from

⁷ *WWIZ, Inc*, 37 F.C.C.2d 685 (1964), *aff'd sub nom Lorain Journal Co v FCC*, 351 F.2d 824 (D.C. Cir 1965), *cert denied*, 383 U.S. 967 (1966)

⁸ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to WKOB Communications, Inc, Sept 30, 2002 (dismissing as repetitious WKOB's petition for reconsideration of *WKOB Communications, Inc, Debtor-in-Possession*, 17 FCC Rcd 1127 (2002), which had denied an application for review of the Commission order affirming WKOB's ineligibility for Class A status)

⁹ WKOB is ineligible for Class A status. *Id*

¹⁰ See *Channel 48 MO&O* at ¶ 6

¹¹ See *id* at ¶ 4.

¹² WKOB Petition at 2

interference or justify a departure from the FCC's DTV implementation policies.¹³ Potential bidders had been repeatedly cautioned that participation at auction would not change the secondary nature of a low power authorization.¹⁴

Finally, WKOB again fails to explain how the Commission could have possibly erred by considering "theoretical" coordinates, rather than the site subsequently specified in WRNN's application for a construction permit, in the allotment proceeding.¹⁵ Specification of theoretical coordinates in petitions for rulemaking to modify television allotments has been the practice for decades. Moreover, the facilities authorized in WRNN's construction permit complied in all respects with the FCC's technical rules and interference criteria.¹⁶ WKOB's Petition does not allege anything to the contrary.

The *Channel 48 MO&O* rejected WKOB's Application for Review in this proceeding because it "had not specified, as required by [FCC] rules, any factors that warrant Commission review."¹⁷ Despite that unambiguous conclusion, WKOB's Petition merely repeats, for the fifth time, the same baseless arguments that the Commission previously determined did not justify further scrutiny. Granting WKOB additional consideration in this proceeding would accomplish nothing, therefore, other than to burden the Commission's limited resources and to delay the

¹³ See *Channel 48 MO&O* at ¶ 6.

¹⁴ See *id.* n 7, WRNN Opposition to Application for Review, MM Docket No. 00-121 (Sept. 13, 2002) at 5-9.

¹⁵ WKOB Petition at 3-4

¹⁶ See *Channel 48 MO&O* at 2

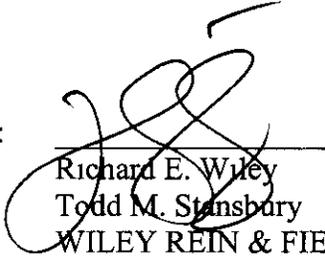
¹⁷ *Id.* at ¶ 6.

finality of WRNN's DTV authorizations. Accordingly, the Commission should swiftly dismiss the Petition.

Respectfully submitted,

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October 21, 2003

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CERTIFICATE OF SERVICE

I, Kimberly Booth, a secretary at the law firm of Wiley Rein & Fielding LLP, hereby certify that on October 21, 2003, I served a copy of the foregoing "Opposition" by first class mail, postage prepaid, to the following:

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